

(Published in R Petrov and P Van Elsuwege (eds), *Post-Soviet Constitutions and Challenges of Regional Integration* (Routledge 2018))

## From EU Integration Process to the Eurasian Economic Union: The Case of Armenia

Narine Ghazaryan and Laure Delcour

### Introduction

As a small constituent of the so-called ‘shared’ or currently ‘divided’<sup>1</sup> neighbourhood between Russia and the European Union (EU), Armenia seemingly successfully pursued a policy of complementarity<sup>2</sup> with both regional actors for most of its independent existence. The EU-Armenia relations were to advance further with the negotiation of an Association Agreement promising closer political and economic ties with the Union. The European integration course, however, came to an abrupt end when the national government announced its withdrawal from the project in September 2013 prior to the Eastern Partnership (EaP) Vilnius summit where the agreement was to be initialled.<sup>3</sup> The country’s leadership simultaneously declared its intention to embark on an alternative integration process — accession to the Russian-led Eurasian Customs Union (ECU) and Common Economic Space<sup>4</sup> — under explicit pressure from Russia. The ECU and the relevant Common Economic Space were upgraded to a Eurasian Economic Union (EAEU) with a signature of a relevant agreement in May 2014 which replaced over 100 agreements laying the basis for the former two entities. Armenia previously

---

<sup>1</sup> L Delcour and H Kostanyan, ‘Towards a Fragmented Neighbourhood: Policies of the EU and Russia and their consequences for the area that lies in between’, CEPS Essay, No 17/17 October 2014.

<sup>2</sup> S Vasilyan, ‘The External Legitimacy of the EU in the South Caucasus’, *European Foreign Affairs Review* 16, 2011, pp. 341, 346; A Iskandaryan, ‘Armenia-Russia Relations: Geography Matters’ in: A Hug (ed), *Spotlight on Armenia*, UK: Foreign Policy Centre, 2011, p.54.

<sup>3</sup> ‘Armenia chooses Russia over EU’, *European Voice*, 3 September 2013.

<sup>4</sup> Russia, Belarus, Kazakhstan and Kyrgyzstan signed an agreement on 26 February 1999 on the Customs Union and Common Economic Area. A year later an agreement was signed on 10 October 2000 by the same countries plus Tajikistan on the creation of Eurasian Economic Community. On 19 September 2003 Russia, Belarus, Kazakhstan and Ukraine signed an agreement on the formation of the Common Economic Area. On 6 October 2007 Russia, Belarus and Kazakhstan signed an agreement creating the customs territory and the customs union. On 28 November 2009 an agreement on the Common Customs Area was signed. From January 2012 the Customs Union was replaced by the Common Economic Area. In May 2014 the same three countries signed an agreement on the establishment of the Eurasian Economic Union which was to come into existence in January 2015.

For the chronology of the integration projects see Y Vymyatnina and D Antonova, *Creating a Eurasian Union: Economic Integration of the Former Soviet Republics*, Basingstoke: Palgrave, 2014, pp. 2-5; R Dragneva, ‘The Legal and Institutional Dimensions of the Eurasian Customs Union’ in: R Dragneva and K Wolczuk (eds), *Eurasian Economic Integration: Law, Policy and Politics*, Cheltenham: Edward Elgar, 2013, pp. 34-60.

only had an observer status in the Eurasian Economic Community which existed between 2000 and 2014, and did not express much interest in becoming a member of the latter or its anticipated successor organisations. Having withdrawn from the EU integration course in September 2013, hasty measures were undertaken for the country's accession to the rival project. On 24 October 2013, a Declaration of the Heads of States of the Republic of Belarus, Republic of Kazakhstan, Russian Federation and the Republic of Armenia on the participation of the Republic of Armenia in the Eurasian integration process was adopted, followed by the Decision of the Supreme Eurasian Economic Council on an accession roadmap in December 2013.<sup>5</sup> In May 2014, a treaty on Armenia's accession to the Eurasian Economic Union was signed paving the way for the country's membership on 2 January 2015.<sup>6</sup>

As a result of this major shift in Armenia's political life, the country faces a two-track process that is one of reluctant integration to EAEU and one of disintegration from the previous EU-oriented course. This process raises issues of legislative and institutional nature as provisions should be made to accommodate Armenia's accession to an alternative trade block. At the same time, the country faces the legacy of years of legislative approximation with the EU *acquis communautaire*. What should happen to the outputs of the EU integration process that has been cut short? What impact, if any, would Armenia's Eurasian integration process have on its WTO obligations? In addition to these questions, another important issue is the future of Armenia's cooperation with the EU. Following the announcement on withdrawal from the Association Agreement the Armenian Government noted that the country would be in favour of signing another — less ambitious — agreement with the EU.<sup>7</sup> Since the new agreement had to take into account Armenia's membership in the EAEU, the negotiations were opened in December 2015<sup>8</sup> and finalised in February 2017. The Comprehensive and Enhanced Partnership Agreement was initialled one month later in Yerevan.<sup>9</sup> In addition to the bilateral cooperation, the prospect of EU cooperation with Armenia through EAEU should also be considered, even though it appears unlikely in present.

Armenia, therefore, should be seen as a unique case-study of parallel processes of political and economic integration and disintegration. It is for this reason that the chapter deviates somewhat from the format of the cases studies presented in the volume. Against this background, the next section overviews the reversal of the EU integration process, including the impact of the EAEU accession

---

<sup>5</sup> See <<http://www.eurasiancommission.org/en/nae/news/Pages/02-01-2015-1.aspx>>.

<sup>6</sup> Treaty on the Accession of the Republic of Armenia to the Treaty on Eurasian Economic Union, 29 May 2014. Available at [https://docs.eaeunion.org/docs/ru-ru/0047297/itia\\_11102014](https://docs.eaeunion.org/docs/ru-ru/0047297/itia_11102014) (accessed on 22 June 2016).

<sup>7</sup> 'Armenia still hopes for Association Agreement with EU', *Armenia Now*, 5 September 2013.

<sup>8</sup> 'EU and Armenia launch negotiations for a new agreement' EEAS Press Release, Brussels, 7 December 2015.

<sup>9</sup> 'Joint Press Release by the European Union and Republic of Armenia on the initialling of the EU-Armenia Comprehensive and Enhanced Partnership Agreement', Yerevan, 21 March 2017.

on Armenia's WTO commitments. Next, the legislative and institutional aspects of the new economic integration course are considered, including the status of the EAEU legislation in the Armenian legal order. The final section concerns the current and future prospects of EU-Armenia cooperation. The chapter is concluded with a brief summary of findings.

## **The Wider Narrative of Reversing the Process of EU Integration and Armenia's Accession to EAEU**

Armenia offers an unprecedented example of (dis-)integration with the EU under the European Neighbourhood Policy (ENP)/EaP.<sup>10</sup> Between 2010 and 2013, the country has engaged into substantial reforms in line with EU demands as part of negotiations for an Association Agreement and a Deep and Comprehensive Free Trade Area (DCFTA). Prior to that, attempts at legislative approximation were undertaken within the frame of the PCA relevant provisions.<sup>11</sup> These efforts came to an abrupt end following the declaration of the Armenia's Government's intention to join a rival Eurasian integration project. This decision seemingly put an end to the EU integration process in Armenia, given that membership in the EAEU precludes the conclusion of a DCFTA.<sup>12</sup> One of the main reasons for this is that the membership of the EAEU entails an imposition of common external tariff which is incompatible with the abolition of tariffs envisaged under the DCFTA. This section seeks to explore both the reasons that prompted Armenia to give an unprecedented impetus to integration with the EU when the EaP was launched in 2009 and the factors that steered the country away from EU integration and toward the Eurasian project in 2013-2015. It also scrutinises the extent to which Armenia has actually reversed the process of EU integration and engaged with Eurasian integration.

### *The narrative guiding EU integration: the need for modernisation*

---

<sup>10</sup> European Commission, Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours COM (2003) 104 final, 11 April 2003; Commission Communication, Eastern Partnership COM (2008) 823 final, 3 December 2008.

<sup>11</sup> N Ghazaryan and A Hakobyan, 'Legislative Approximation and Application of EU Law in Armenia' in: R Petrov and P Van Elsuwege (eds), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union*. London: Routledge, 2014, pp. 191-213.

<sup>12</sup> L Delcour, H Kostanyan, B Vandecasteele and P van Elsuwege, 'The Implications of Eurasian Integration for the EU's Relations with the Countries in the post-Soviet Space' *Studia Diplomatica*, 68 (1), 2015, pp. 5-33; P de Micco, 'When Choosing Means Losing: the Eastern Partners, the EU, and the Eurasian Economic Union' European Parliament, Study, pp. 7-8, <[http://www.europarl.europa.eu/Reg-DATA/etudes/STUD/2015/549026/EXPO\\_STUD\(2015\)549026\\_EN.pdf](http://www.europarl.europa.eu/Reg-DATA/etudes/STUD/2015/549026/EXPO_STUD(2015)549026_EN.pdf)>, (accessed 22 June 2016).

Despite Armenia being regarded as a ‘hesitant’ ENP partner in the mid-2000s,<sup>13</sup> it subsequently launched major institutional and policy reforms to deepen EU integration.

Upon the conclusion of the ENP Action Plan in 2006, the country introduced an institutional mechanism which gave a prominent role to the Ministry of Economy for coordinating the activities related to EU integration.<sup>14</sup> In the late 2000s, Armenia selectively adopted EU demands under the ENP Action Plan. For instance, while it introduced significant reforms in the migration area, the country’s compliance was assessed as shallow in the case of energy and anti-corruption policies.<sup>15</sup>

However, the narrative about EU integration changed in the early 2010s. The EU’s offer under the EaP was welcomed in Yerevan. For South Caucasus countries, the EaP held significant promise as it offered greater proximity with the EU by extending tangible incentives — enhanced contractual framework, DCFTAs and visa liberalisation — that hitherto had been on the table with Ukraine only. The Armenian authorities, in particular, perceived the EaP as an opportunity to carry out their own reform agenda. Economic modernisation indeed emerged as an imperative in light of the country’s increasing vulnerability after the Russian-Georgian conflict, the failed rapprochement with Turkey and the global economic and financial crisis.<sup>16</sup> Domestic pressure for reforms also increased in the wake of the deep political crisis that followed the 2008 presidential elections and the post-electoral crackdown on opposition demonstrators.<sup>17</sup>

Against that backdrop, the Armenian authorities regarded reforms as a *sine qua non* both for ensuring their own political survival and for reducing the country’s regional vulnerability. They also viewed the EU *acquis* as a template for modernisation, and a consensus emerged among domestic actors on the benefits of closer relations with the EU.<sup>18</sup> Therefore, in contrast to some other EaP countries, the Armenian narrative on EU integration was premised neither upon an aspiration to join the EU, nor even upon a shift in the country’s geopolitical orientation. Instead, it emphasised the EU’s role domestically, as highlighted by President Sargsyan in 2011:

---

<sup>13</sup> N Tocci, ‘Can the EU Promote Democracy and Human Rights Through the ENP? The Case for Refocusing on the Rule of Law’ in: M Cremona and G Meloni (eds), *The European Neighbourhood Policy: A New Framework for Modernisation? EUI Working Papers*, LAW 2007/21, 2007, p.27.

<sup>14</sup> N Ghazaryan, *The European Neighbourhood Policy and the Democratic Values of the EU: A Legal Analysis*, Oxford/Portland: Hart Publishing, 2014, p.143.

<sup>15</sup> E Ademmer and T Börzel, ‘Migration, Energy and Good Governance in the EU’s Eastern Neighbourhood’, *Europe-Asia Studies* 65 (4), 2013, pp.591-608.

<sup>16</sup> L Delcour and K Wolczuk, ‘The EU’s Unexpected “Ideal Neighbour”? The Perplexing Case of Armenia’s Europeanisation’ *Journal of European Integration*, 37(4), 2015, pp.491-507.

<sup>17</sup> ‘EU Presidency Statement on the Situation in Armenia’, 12 March 2008.

<sup>18</sup> Delcour and Wolczuk, *op.cit.*

‘We have stated more than once that European direction is our priority. In recent years, we have registered considerable success in that area. [The EU] has not only become one of our most important partners in the world but also plays a significant role inside Armenia, assisting us in the implementation of the reforms and in strengthening economic and overall stability of the country’.<sup>19</sup>

Armenia’s interest in the EU’s model translated into substantial domestic change in line with EU templates in a process of ‘silent Europeanisation’.<sup>20</sup> In fact, Armenia quickly caught up with Georgia and Moldova in the negotiations for a DCFTA. However, in some sectors (for instance energy) the country’s efforts to initiate reforms consistent with EU demands were short-lived due to the increasing pressure of Russia.<sup>21</sup> Perhaps paradoxically, Armenia’s efforts to reduce its vulnerability by becoming more competitive and diversifying its foreign policy stumbled against the strategic use of this vulnerability by its main ally, the Russian Federation.

#### *From EU to Eurasian integration: security as an overarching priority*

While the Armenian authorities regarded the EU integration process as compatible with the Russian-guaranteed security umbrella, in 2013 Russia started increasing its pressure on the country to join the ECU — an option initially ruled out by Armenia.<sup>22</sup>

Russia has been Armenia’s most important ally since its independence. Russian military bases are located in the country, and a Treaty on Friendship and Cooperation was signed in 1990s securing the military bond.<sup>23</sup> The defence cooperation securing Russia’s future role was reaffirmed by a renewed agreement in 2010 securing the presence of the Russian military base in Armenia until 2044.<sup>24</sup>

---

<sup>19</sup> President Sargsyan, speech before the plenary meeting of the 20th Congress of the European People’s Party (EPP), Marseille, 7 December 2011, <<http://www.president.am/en/foreign-visits/item/2011/12/07/news-344/>> (accessed 22 June 2016.)

<sup>20</sup> L Delcour ‘Faithful but Constrained? Armenia’s Half-Hearted Support of Russia’s Regional Integration Policies in the Post-Soviet Space’ in: D Cadier (ed), *The Geopolitics of Eurasian Economic Integration*, LSE, IDEAS Reports, 42, <<http://www.lse.ac.uk/IDEAS/publications/reports/SR019.aspx>> (accessed 22 July 2016).

<sup>21</sup> E Ademmer, ‘Interdependence and EU-Demanded Policy Change in a Shared Neighbourhood’, *Journal of European Public Policy* 22(5), 2015, p.671, pp.678-79.

<sup>22</sup> This option was ruled out in particular by the then Prime Minister Tigran Sargsyan. Cf. G Arevian, ‘Armenia Again Rules Out Entry into Russian Customs Union’, <<http://www.accc.org.uk/armenia-again-rules-out-entry-into-russian-customs-union/>> (accessed 22 June 2016).

<sup>23</sup> According to Article 2 of the agreement the parties commit to close cooperation to guarantee ‘the sovereignty, territorial integrity and security’ of both countries. Armenia is also one of the founding members of the Collective Security Treaty Organisation established in 1992 whereby Russia guarantees its security.

<sup>24</sup> ‘Russia, Armenia Sign Extended Defence Pact’ *Radio Free Europe*, 20 August 2010.

Armenia perceives Russia as its main security guarantor due to constant threats from Azerbaijan over the Nagorno-Karabakh conflict and the continuous economic isolation stemming from the close ties and cooperation between Georgia, Azerbaijan and Turkey.<sup>25</sup> Moreover, the country has a strong dependence on energy supplies from Russia.<sup>26</sup> In the area of energy cooperation Russia's leverage has been noted whereby it does not require resorting to hard power to achieve its objectives, but instead can do so by delivering energy for cheap prices.<sup>27</sup> Such strategies have been used regularly by Russia as a manipulative tool enabling it to acquire resources in the neighbouring states, but also to deliver certain policy results. Tolstrup notes the arbitrary differences in gas prices, whereby Georgia would be forced to pay twice the price of that paid by Armenia.<sup>28</sup> Moreover, Russia is traditionally the largest foreign investor in Armenia with stakes in sectors as important as banking, telecommunications and electricity, including the Hrazdan and Medzamor power plants.<sup>29</sup>

Russia's simultaneous use of different yet equally powerful leverages (massive arms sales to Azerbaijan in spring 2013, followed by Vladimir Putin's visit to Baku in August; and an increase of gas prices by 50 percent in July 2013) was perceived as a clear signal by Armenia,<sup>30</sup> a few weeks after DCFTA negotiations were completed and two months before the EaP summit in Vilnius. In essence, Armenia's decision not to initial the Association Agreement and the DCFTA was determined by the country's security situation. Ultimately, given the salience of the Nagorno-Karabakh conflict with Azerbaijan, Armenia's regional vulnerability in view of its closed border and lack of diplomatic relations with Turkey, and the latter's unequivocal support for Azerbaijan, the country had little choice but to accommodate Russian requirements and join the Eurasian project. Thus, Armenia was far from a willing candidate country for accession to the Eurasian integration project: it was 'more resigned to joining the EAEU than motivated by any genuine enthusiasm for the prospect'.<sup>31</sup> The

---

<sup>25</sup> The economic cooperation between Turkey, Armenia and Azerbaijan inter alia includes the transportation of oil via the Baku-Tbilisi-Ceyhan pipeline launched in May 2005 from the Caspian Sea to the Mediterranean port of Ceyhan, and of natural gas via the Baku-Tbilisi-Erzurum from Azeri Shah-Deniz gas field since 2006.

<sup>26</sup> The opening of a gas pipeline from Iran on 19 March 2007 was expected to lessen the country's dependence on Russia., however a large share in the project was sold to the Russian Gazprom; 'Shadow Dancing: Armenia's Courtship with Independence', *Armenian Diaspora*, 15 December 2006.

<sup>27</sup> C Nitoiu, 'Reconceptualizing "Cooperation" in EU-Russia Relations', *Perspectives on European Politics and Society* 12, 2011, p.462, 466.

<sup>28</sup> J Tolstrup, 'Studying a Negative External Actor: Russia's Management of Stability and Instability in the "Near Abroad"', *Democratisation*, 16 (5), 2009, p.922, 935.

<sup>29</sup> 'Armenia selling more infrastructure, industry to Russia', *Eurasia Daily Monitor*, 7 November 2006; 'Russia steps up economic presence in Armenia', *Armenian Diaspora*, 17 November 2006.

<sup>30</sup> 'Russia Starts Delivering \$1 Billion Arms Package to Azerbaijan', *Reuters*, 18 June 2013; 'Gas Price Reduced as Armenia Joins Customs Union' *Asbarez*, 8 October 2013.

<sup>31</sup> N Popescu, 'Eurasian Union: the Real, the Imaginary and the Likely', *Chaillot Paper* No 132, September 2014, p. 22.

decision was made public through a joint statement by Presidents Sargsyan and Putin, during the former's visit to Moscow, thereby giving a clear indication of Russia's role in Armenia's U-turn. This statement ran counter the principle of complementarity that had underpinned Armenian foreign policy thus far and established a clear connection between deeper political and security cooperation with Russia, on the one hand, and enhanced economic integration as part of the Eurasian project, on the other hand.<sup>32</sup>

While Armenia's backtracking from EU integration derives from its security concerns, the EAEU (in sharp contrast to the EU) has never been perceived as a vector of modernisation. Instead, for some Armenian businessmen, EAEU membership is a clear opportunity to maintain joint legacies from the Soviet period and avoid the costs of reforms.<sup>33</sup> In fact, the decision to join the EAEU was made despite the economic costs to be incurred by the country. The ECU's initial common external tariff was broadly aligned to Russia's tariff schedule and therefore much higher than Armenia's. Like Kazakhstan and Kyrgyzstan, the country should approximately double its average tariff to adopt the common tariff. Therefore, applying EAEU tariffs was expected to result in an increase in the price of imported goods while Armenia would gain only limited benefits from the redistribution of common customs duties. As stipulated in the Treaty on the Accession of the Republic of Armenia to the Eurasian Economic Union (2014), the country should receive 1.13% of the total custom duties, demonstrating the asymmetric nature of potential benefits for its members.<sup>34</sup> Besides, Armenia is still expected to incur significant costs as a result of trade diversion after joining the EAEU. According to a study commissioned by the EU, the implementation of the DCFTA would have implied a 2.3% increase in Armenia's GDP,<sup>35</sup> while having no negative impact in Armenia's trade with third countries.<sup>36</sup> In particular, the DCFTA would have offered increased opportunities for foreign investment and it would also have enhanced the competitiveness of Armenia's economy based upon regulatory convergence with the EU's advanced technical standards.

---

<sup>32</sup> President of the Republic of Armenia, "Joint Statement on the results of the visit of the President of the Republic of Armenia to the Russian Federation", 3 September 2013, <<http://www.president.am/en/press-release/item/2013/09/03/President-Serzh-Sargsyan-and-President-Vladimir-Putin-joint-statement/>> (accessed on 22 June 2016).

<sup>33</sup> A Grigoryan, 'Armenia: Joining Under the Gun' in: S F Starr and S Cornell (eds), *Putin's Grand Strategy: the Eurasian Union and its Discontents*. Washington: Central Asia-Caucasus Institute & Silk Road Studies Program, 2014, pp. 98-108.

<sup>34</sup> R Giragosyan, 'Armenia and the Eurasian Economic Union: A View from Yerevan' ECFR Commentary, 8 January 2015, <[http://www.ecfr.eu/article/commentary\\_armenia\\_and\\_the\\_eurasian\\_economic\\_union\\_the\\_view\\_from\\_yerevan387](http://www.ecfr.eu/article/commentary_armenia_and_the_eurasian_economic_union_the_view_from_yerevan387)>, (accessed on 22 June 2016).

<sup>35</sup> ECORYS/CASE, *Trade Sustainability Impact Assessment in support of negotiations of a DCFTA between the EU and the Republic of Armenia*. ECORYS/CASE: Rotterdam, 2013, p.13.

At the same time, it should be noted that the predicted benefits of the DCFTA would not have taken into account the possibility of Russian retaliation as seen in Ukraine and Moldova.<sup>36</sup>

In contrast, Armenia exports low-quality goods to Russia. In addition, accession to the EAEU has only strengthened the country's over-reliance on Russia in strategic economic sectors, such as energy, communication and transports. For instance, the energy agreement signed on 16 January 2014 only tightens the Russian stranglehold over Armenia's energy sector, with the cession to Gazprom of the remaining shares in Armenia's gas distribution company (now called Gazprom Armenia) and a commitment to buy gas exclusively from Russia until 2043 in exchange for lower gas prices and repayment of only half of Armenian energy debt.<sup>37</sup> Other Russian investment projects, such as upgrading Armenia's railway system and plans to build a rubber plant, although they seem promising, threaten to increase further the country's dependence on Russia.<sup>38</sup> Moreover, the reversal can also have a negative effect on those emerging sectors, such as information technologies, that mostly depend on Western investment.<sup>39</sup>

In addition, as a consequence of its joining the EAEU and applying higher tariffs, Armenia faced possible renegotiations of tariffs with affected WTO members. However, the actual scope of these renegotiations remains to be ascertained. To entice Armenia and Kyrgyzstan (also a WTO member), Russia promised subsidies for possible claims by WTO members.<sup>40</sup> While the Treaty on Accession to the EAEU provides Armenia with a transition period (until 2022) for such renegotiations, no clear mechanism for compensation was envisaged by the Eurasian Economic Commission a few months after Armenia's accession.<sup>41</sup> This is also because the EAEU average common external tariff is decreasing (as a result of the gradual implementation by Russia of its WTO commitments) below Armenia's WTO bound average tariff.<sup>42</sup> The gradual reduction of the common external tariff in line with Russia's WTO commitments would see it fall below Armenia's average tariff in the course of 2016.

Overall, participation in the Eurasian integration process only perpetuates Armenia's paradoxical situation. The country regards Russia as the major ally to preserve its territory from threats in a very challenging regional environment and this perception has been decisive in the 2013 decision to join the EAEU. The upsurge of violence in Nagorno-Karabakh in April 2016<sup>43</sup> has only reignited the security and political concerns which prompted Armenia's 2013 U-turn.

---

<sup>37</sup> Delcour, *op.cit.*, p.42.

<sup>38</sup> De Micco, *op.cit.*, 54.

<sup>39</sup> Giragosyan, *op.cit.*.

<sup>40</sup> De Micco, *op.cit.*, p.54.

<sup>41</sup> Authors' interview, Armenian Minister, Eurasian Economic Commission, Moscow, May 2015.

<sup>42</sup> D Tarr, 'The Eurasian Economic Union among Russia, Belarus, Kazakhstan, Armenia and the Kyrgyz Republic: Can it succeed where its predecessor failed?', *Eastern European Economics* 54 (1), 2016, pp.1, 8.

<sup>43</sup> 'Armenia warns Nagorno-Karabakh clashes could turn into all-out war' *Reuters*, 4 April 2016.



However, Armenia's over-reliance on Russia's energy resources and investments (stemming from Russia's leverage on security issues), as well as on remittances from migrants living in the Russian Federation, actually erodes the country's independence and increases its vulnerability.<sup>44</sup> In fact, despite closer links with Armenia since its turn-back, Russia continues to sell arms to Azerbaijan and thereby fuels the conflict as well as Armenia's security vulnerability.<sup>45</sup>

Furthermore, the economic impact of accession to the EAEU is still unclear. Shortly before Armenia's accession, economic experts expected very few short-term positive effects, while noting that in the long term they were uncertain.<sup>46</sup> Armenia's accession to the EAEU also came at a dire point. The economic crisis in Russia affected trade flows among EAEU members (that decreased significantly in the first six months of 2015)<sup>47</sup> and undermined the competitiveness of Armenian goods on the Russian market: Armenian exports decreased by 6.3% due to the ruble devaluation.<sup>48</sup>

### *Reversing the EU integration process or maintaining some degree of complementarity?*

Despite their decision to join the Eurasian project, since 2013 Armenian authorities have attempted to maintain (and even to expand) the links with the EU. This is primarily because the reasons that prompted Armenia to embrace EU templates under the EaP have not vanished. As emphasised by President Sargsyan during the Vilnius EaP Summit, the EU is still regarded as a model for Armenia's modernisation:

‘Building and strengthening Armenian nationhood upon a European model has been a conscious choice of ours, and that process is hence irreversible. Our major objective is to form such mechanisms with the EU that on the one hand would reflect the deep nature of our social, political and economic relationship, and on the other—would be compatible with other formats of co-operation’.<sup>49</sup>

---

<sup>44</sup> Delcour, *op.cit.*, p.42.

<sup>45</sup> ‘More Russian Arms Deals With Azerbaijan Add Insult To Armenia's Injury’, *EurasiaNet*, 27 May 2014.

<sup>46</sup> ‘Armenia Economic Report 2014: Eurasian Integration and Trade’ Economic Development and Research Centre, November 2014’, 73-74, <[http://www.edrc.am/images/Useful\\_Publications/aer\\_2014\\_eng.pdf](http://www.edrc.am/images/Useful_Publications/aer_2014_eng.pdf)> (accessed 22 June 2016).

<sup>47</sup> ‘Membership Benefits? Armenia's Exports to EEU Countries Plummet’ *Hetq*, 7 August 2015.

<sup>48</sup> De Micco, *op.cit.*, p.55.

<sup>49</sup> Statement by Serzh Sargsyan, President of the Republic of Armenia at the Third Eastern Partnership Summit, Vilnius, 29 November 2013, <<http://www.president.am/en/statements-and-messages/item/2013/11/29/President-Serzh-Sargsyan-at-the-third-Eastern-Partnership-summit-speech/>> (accessed 22 June 2016).

Therefore, since the decision to backtrack from the Association Agreement and the underlying DCFTA was announced, the Armenian bureaucracy has strived to preserve the substantial reforms conducted in 2010-2013 under the EaP. Prior to joining the EAEU, in 2013-2014, it completed the implementation of sectoral strategies and action plans adopted as part of the negotiations for a DCFTA.<sup>50</sup> Upon accession to the EAEU, a degree of autonomy has been preserved due to three factors. First, it is facilitated by the climate of uncertainty that followed the creation of the EAEU, as some key Eurasian common policies and standards are in the making. Second, Armenia managed to secure a high number of exemptions (approximately 800) during the accession negotiations to the EAEU. While most of these are temporary, the country will not have to comply fully with EAEU standards before 2022. Third, as both the DCFTA and the EAEU are (in principle) based upon WTO rules, some of their standards are compatible. Therefore, previous compliance with EU demands is broadly seen as an asset for Armenia in the Eurasian integration project. In fact, as a result of both its early WTO membership and especially its substantial adoption of EU templates in 2010-2013, Armenia is regarded as a frontrunner compared to other EAEU members.<sup>51</sup> Interestingly, the Eurasian Economic Commission refers to Armenia as an example to follow in a number of sectors.<sup>52</sup> The Armenian government intends to exploit this advanced status to ‘act as a bridge’ between the EU and the EAEU,<sup>53</sup> and more specifically to promote EU standards (whenever possible) within the EAEU.<sup>54</sup> This narrative suggests that the EU integration process has not been fully reversed in the country. Instead, it is now subsumed within a broader narrative emphasising the role of the EU as a model for Eurasian integration and calling for a bloc-to-bloc dialogue.

## **Legal Aspects of Eurasian Integration and the Status of the EAEU Legislation in the Armenian Legal Order**

Unlike the EU integration process which was incremental and covered reforms stretched over a number of years, the Eurasian integration efforts were hasty and rushed. This section considers some constitutional and legal issues concerning Armenia’s accession to the EAEU.

---

<sup>50</sup> Authors’ interviews, Ministry of Economy; Food Safety Service, Yerevan, March 2014.

<sup>51</sup> This is particularly due to Armenia’s accession to the WTO in early 2003, i.e. much earlier than the founding members of the Eurasian Customs Union. While Belarus is not a WTO member, Russia joined in 2012 and Kazakhstan in 2015. Among current EAEU members, only Kyrgyzstan acceded earlier than Armenia.

<sup>52</sup> Authors’ interview, Department of Integration, Eurasian Economic Commission, Moscow, May 2015.

<sup>53</sup> Authors’ interview, Ministry of Foreign Affairs, Yerevan, March 2015.

<sup>54</sup> Authors’ interview, Ministry of Economy, Yerevan, March 2015.

### *The legal process of accession and its constitutional implications*

Until the September 2013 U-turn, no prospect of accession to the ECU and the Common Economic Space were on the agenda of the government. Instead, a memorandum on cooperation between the Armenian Government and the Eurasian Economic Commission was adopted in April 2013 to hold consultations, organise seminars and conferences, conduct research activities etc.<sup>55</sup> However, after the September announcement and the December 2013 Decision of the Supreme Eurasian Economic Council on a roadmap for Armenia's membership, the Armenian Government was required to adopt swiftly 126 measures before its accession to the ECU and the Common Economic Space.<sup>56</sup> On 23 January 2014, the Government adopted a list of actions to implement the said roadmap.<sup>57</sup> The Decision established a set of measures to be implemented pre- and post-accession. Those measures which had been set for implementation prior to the accession appeared to be rather hasty. Despite their volume and number, most pre-accession measures were to be taken in the course of the two months following the adoption of the decision. The national measures were assigned to various ministries, state agencies and the Central Bank of Armenia with the leading roles of the Ministry of Finance and Ministry of Economy. Other measures, including those to be taken upon accession, were to be implemented jointly with the other member states or with the Eurasian Economic Commission. Thus, the integration process hinged upon swift executive performance involving the Government at the expense of the national Parliament. While the measures were being implemented, the accession treaty to the EAEU was adopted in May 2014 and signed in October 2014.

According to Article 6 of the Armenian Constitution, once ratified, an international agreement becomes part of national legal order and prevails over national legislation. It is the task of the National Parliament to ratify international agreements upon a recommendation by the President. The Parliament should ratify among others agreements 'the implementation of which envisages amendments to laws or adoption of a new law or defines norms contradicting the laws'. The accession Treaty to the EAEU most certainly was of such nature and required parliamentary ratification. International agreements cannot be ratified if they contradict the national constitution.

Thus, before the ratification of the EAEU accession agreement in the Parliament, the Armenian President submitted an application to the Constitutional Court on the conformity of the agreement with the constitution. According to Article 100(2) of the Constitution, the Constitutional Court shall rule on the conformity of the international agreements with the Constitution. The approval of

---

<sup>55</sup> See <<http://www.eurasiancommission.org/en/nae/news/Pages/02-01-2015-1.aspx>>.

<sup>56</sup> See <<http://www.eurasiancommission.org/en/nae/news/Pages/02-01-2015-1.aspx>>.

<sup>57</sup> Decision No 61-N, 23 January 2014.

the Constitutional Court would ensure that there are no internal obstacles to the country's membership to the EAEU as the Government most certainly could count on the Parliament's approval. In a rather prompt decision the Constitutional Court affirmed the compatibility of the agreement with the fundamental principles of the Constitution, including the principles of sovereignty, rule of law and adherence to norms and principles of international law, as well as Armenia's international obligations, including in the WTO.<sup>58</sup> However, it should be noted that the decision of the Court offers only superficial analysis and fails to engage sufficiently with the issues it raised, for instance on Armenia's legal obligations stemming from its WTO membership. The Court also decided the case on the basis of a so-called 'written procedure' avoiding presentations by the Government and its opponents thus limiting opportunities for debate.<sup>59</sup>

Following the approval by the Constitutional Court, the agreement was ratified in the National Assembly with only a handful of votes against it. The fact that all major parties in the Parliament voted predominantly in favour of the EAEU accession does not necessarily indicate an overwhelming public support for this course. Rather, it can be explained by lack of genuine opposition capable of challenging the official course of the government, and the rubber-stamp role of the national Parliament. Thus, the lack of a substantive debate, including in the Parliament, was a notable feature of the Eurasian integration process, one from which the general public, as well as the civil society was excluded. Likewise, negotiations for an Association Agreement and a DCFTA in 2010-2013 were limited to officials and expert circles; yet these agreements did not involve a transfer of sovereignty to the same extent as the EAEU. Although the critics of the impending membership were rather vocal in warning about the consequences of EAEU accession in terms of Armenia's independence, they failed to mobilise mass support similar to Maidan protests in Ukraine.<sup>60</sup>

Another important issue related to Armenia's internal political situation and the rationale behind its accession to the EAEU is that of the application of the new trade regime to the Nagorno-Karabakh Republic. Despite its proclaimed independence status (albeit not recognised by the international community), Nagorno-Karabakh has a close association with Armenia, and the Karabakhi Armenians are citizens of the Republic of Armenia. Despite this arrangement, the EAEU rules will be restricted to the territory of the Republic of Armenia, hence excluding Nagorno-Karabakh from

---

<sup>58</sup> The Case on Conformity of the Obligations Stipulated in the Treaty on 'The Accession to the Treaty of May 20, 2014 on "The Eurasian Economic Union" signed by the Republic of Armenia' Signed on October 10, 2014 in Minsk with the Constitution of the Republic of Armenia, November 14, 2014 DCC - 1175, para 4.

<sup>59</sup> 'Constitutional Court OKs Armenian Entry to Eurasian Union' *Azatutyun*, 14 November 2014.

<sup>60</sup> *Ibid.*

the arrangement. Kazakhstan was particularly firm on this restriction<sup>61</sup> to avoid possible complications under international law and probably in order to avoid Azerbaijan's discontentment. It is also in the Russian interest to avoid any complications as far as at the conflict is concerned: the status quo accords Russia with a certain leverage over Azerbaijan, as discussed further below. The exclusion of Karabakh from the arrangement is particularly noteworthy in view of applying the EAEU rules to Crimea following its annexation by Russia.<sup>62</sup> At the same time, it might be difficult to patrol in practice that the potential benefits of the EAEU are restricted to the territory of Armenia: for instance, Armenians from Karabakh hold Armenian passports and should therefore benefit from the rules on the free movement of labour.

### *The status of the EAEU legislation in the Armenian legal order*

As noted above, the Armenian constitution regulates the status of international agreements which become part of national legal order upon their ratification and prevail upon any contradicting national law. The Constitution, however, does not contain any provisions on the status of the legislative acts made by an international organisation to which the country accedes to.

The Constitutional Court in its decision on the constitutionality of the Treaty on the Accession of Armenia to the Treaty on the EAEU also ruled on the legality of the 'procedure of adoption of decisions by the bodies of the Union and their mandatory nature'. The Court derives a number of 'precise constitutional requirements' from the axiology and some concrete provisions of the Constitution which would be applicable to the decisions of supranational organisations to which Armenia chooses to participate.<sup>63</sup> These include 'guaranteeing state, national and domestic sovereignty', 'legal equality and mutual expediency of international relations', 'prescription of such possible restrictions of human rights which are relevant to the norms and principles of international law', 'possibility of operation of the decisions of supranational bodies for Armenia, only in the scopes of concordance to the Constitution of the Republic of Armenia'.<sup>64</sup> The Court goes on to note that any decisions adopted by a supranational organisation breaching either of these requirements would not be applicable in the Republic of Armenia. The Court comes to a conclusion, therefore, that cooperation with any regional or international organisation which respects these requirements cannot *per se* raise any issue of constitutionality. In a way the Constitutional Court sets certain minimum requirements for the decisions

---

<sup>61</sup> Popescu, *op.cit.*, p.23.

<sup>62</sup> Ibid, 24.

<sup>63</sup> Decision No 61-N, *op.cit.*, para. 7.

<sup>64</sup> Official translation of the Constitutional Court Decision. Available at <http://concourt.am/english/decisions/common/pdf/1175.pdf> (accessed 22 July 2016)

of the EAEU to ensure compliance with the Armenian Constitution. The Court comes to a conclusion that the EAEU legal framework is compliant with these requirements rendering it *constitutionally valid* in Armenia. The next matter analysed by the Court is the relationship of the EAEU decisions and the national law, other than the Constitution.

The Court's analysis is premised on the provisions of the national Law on International Treaties of the Republic of Armenia.<sup>65</sup> Under Article 55 of the law, the decisions and other acts of the institutions of an international organisation established under an international treaty signed by Armenia, should be implemented in accordance with the founding documents of the organisation. The legal force of these decisions depends on whether they have been accorded such by the founding documents of the relevant organisation. According to Article 6 of the Treaty on the EAEU, 'the decisions of the Supreme Eurasian Economic Council and Eurasian Intergovernmental Council shall be enforceable by the Member States in the procedure provided for by the national law'<sup>66</sup> (decisions are acts of regulatory nature adopted by the EAEU institutions<sup>67</sup>). Two implications can be derived from this article. Firstly, the decisions of the EAEU institutions are 'enforceable' in the EAEU Member States, which would mean 'binding' for the purposes of Article 55 of the Armenian Law on International Treaties. This is also supported by Article 2 of the Treaty on Accession of the Republic of Armenia to the Treaty on the EAEU. The latter states that the acts of the EAEU institutions, which are in force at the time of the entry into force of the mentioned Accession Treaty, are applicable on the territory of Armenia. Secondly, the actual application of the EAEU decisions would depend on the procedure prescribed in the national law.

In Armenia, this procedure is set in Article 55(3) of the Law on International Treaties. In case a decision of the institutions of an international organisation is binding on Armenia, the responsible Armenian authority ensures their implementation by adopting appropriate normative, regulatory or other acts, or drafting acts of executive institutions.<sup>68</sup> The relevant provision notes 'if necessary', suggesting that the adoption of a new act will not always be required. It goes on to provide for the scenario whereby the subject matter of the decision of the international organisation is already adequately regulated in Armenia: in those circumstances the responsible authority is required to submit an explanatory note to the national government on the lack of necessity for the adoption of a new legal act.

---

<sup>65</sup> Decision No 61-N, *op.cit.*, para. 10; Law on International Treaties of the Republic of Armenia HO-123-N, 22 February 2007.

<sup>66</sup> Official translation.

<sup>67</sup> See Art. 2 on definitions, Treaty on the EAEU.

<sup>68</sup> These would include those of the President, Government or the Prime Minister.

Article 55 of the Law on International Treaties also regulates the issue of potential conflicts between the decision adopted by the international organisations and any internal Armenian law. In such a scenario, the decisions of the international organisation cannot be implemented until relevant amendments are made to the national law. On the one hand, the presence of the national conflicting law bars the application of the decisions of the international organisation. On the other hand, the application of the national law would also be put on hold. In a way, this suggests an inherent supremacy of the decisions of international organisations binding on Armenia whereby the law imposes an obligation on domestic authorities to amend the national law to pave the way for the implementation of the decisions of the international organisations. At the time of the accession to the EAEU, the Ministry of Justice established a list of more than twenty legislative acts which required amendments by the national parliament.<sup>69</sup> Thus, the issue of the conflict between the regulatory acts of the EAEU and the national law appears to be resolved at a national level in favour of the supranational rules.

It should also be noted that the EAEU inherited numerous regulatory acts from the preceding ECU. The status of these acts in the legal order of Armenia is regulated by Article 2 of the Treaty on Armenia's Accession to the Treaty on the EAEU noted above. It sets the same general rule that these acts are applicable on the territory of Armenia from the moment of the entry into force of the Accession Treaty. However, their application is mitigated by the provisions of Annex 2 on Conditions and Transitional Provisions which sets specific transition provision for various sectors which were part of the legal framework of the ECU.

Thus, while embarking on a new legal process of membership in the EAEU, Armenia at the same time seeks a new form of cooperation with the EU which is discussed next.

### **The Future of Cooperation with the EU: Bilateral or Multilateral Way Forward?**

Even after its accession to the EAEU, Armenia still endeavours to retain some degree of complementarity in terms of both domestic reforms and foreign policy. However, its membership in the new organisation has restricted the possibilities of EU-Armenia cooperation, particularly in the area of traditional EU strength, that is trade policy. After Armenia's accession to the EAEU, any bilateral engagement must accommodate the EAEU membership, and therefore is restricted in terms of trade and focus on other areas of EU competence. As to the future of trade relations, it can take place possibly through bloc-to-bloc cooperation. Here, albeit cautiously, Armenia attempts to posit itself as a 'bridge-builder' in relations with the EU.<sup>70</sup> Even though some consider that the revised ENP

---

<sup>69</sup> Decision No 61-N, *op.cit.*, para 10.6.

<sup>70</sup> Giragosyan, *op.cit.*

might allow for the possibility of developing inter-bloc cooperation (particularly the reference to the cooperation with neighbours of the neighbours),<sup>71</sup> the prospect of bloc-to-bloc cooperation, although invited by Russia, would not as yet appear to be either realistic or desired by the EU. A number of reasons for this supposition are discussed below.

In response to President Sargsyan's decision to join the Eurasian integration process, the EU initially reacted cautiously. While 'respecting Armenia's decision', the EU made it clear that no Association Agreement could be signed given the incompatibility between membership in the EAEU and the DCFTA, an integral part of the former.<sup>72</sup> While it seemed that Armenia was willing to sign the political chapters of the agreement, the EU was unwilling to divide the agreement in that manner.<sup>73</sup> However, the door was left open for a new type of agreement that would take into account Armenia's emerging international commitments. Accordingly, possible areas of cooperation were identified during a scoping exercise in 2014-2015, upon completion of Armenia's EAEU accession negotiations. Yet the exercise proved more difficult than expected, given the uncertainty of developments within the EAEU and hence the lack of clarity of commitments taken by Armenia.<sup>74</sup>

According to Armenian officials,<sup>75</sup> the new agreement is expected to cover<sup>76</sup> a wide spectrum of policy areas, ranging from political dialogue to freedom, security and justice as well as sectoral cooperation. Only some trade-related issues seem to be excluded after Armenia's accession to the EAEU, among which customs and tariffs. The EU's High Representative for Foreign and Security Policy confirmed that both sides aimed 'for a comprehensive framework agreement covering political, economic and sectoral cooperation and taking into account Armenia's more recent commitments'.<sup>77</sup> Based upon the negotiating mandate adopted by the Council in October 2015, the European Commission and the High Representative launched negotiations for a new legally binding agreement with Armenia in December 2015. The declared ambition of the two sides to establish a wide-ranging deal was an important political signal. It highlighted Armenia's determination to retain (as much as possible) a balanced foreign policy and the EU's readiness to depart from the EaP's initial Association

---

<sup>71</sup> De Micco, *op.cit.*, pp.73-74.

<sup>72</sup> 'Gunnar Wiegand: EU respects Armenia's decision to join Eurasian Economic Union' *News.Am*, 4 November 2015.

<sup>73</sup> H Kostanyan, 'The Rocky Road to an EU-Armenia Agreement: From U-turn to Detour', *CEPS Commentary*, 3 February 2015.

<sup>74</sup> *Ibid.*

<sup>75</sup> Authors' interview, Ministry of Foreign Affairs, Yerevan, March 2015.

<sup>76</sup> It should be noted that the text of the agreement is not publicly available at the time of writing. Therefore, we rely on interviews when it comes to the substance of this agreement.

<sup>77</sup> European Union External Action Service, "EU and Armenia launch negotiations for a new agreement", Press Release 151207\_04\_en, 7/12/2015, [http://eeas.europa.eu/statements-eeas/2015/151207\\_04\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/151207_04_en.htm) (accessed 10 April 2016).



Agreement/DCFTA package with the view to adjusting to partners' needs and specific circumstances. While differentiation among the neighbouring countries was one of the principles incorporated in the ENP, and later adopted also by the EaP initiative,<sup>78</sup> the revision of the ENP in 2015 puts a more pronounced emphasis on this notion.<sup>79</sup> This means that as far as the EU is concerned, offering Armenia a tailored approach is well within the Union's current strategy in the region. In addition to the external factor of diversifying its foreign policy, an internal factor also contributed to Armenia's intention to establish new links. In the period preceding the April 2017 parliamentary elections, the ability to establish closer links with the EU was used by the authorities as a factor in favour of retaining the power.<sup>80</sup>

The newly initialled agreement appears to be of a framework nature. As to its possible legal basis, a few observations can be made. Article 217 TFEU can most certainly be ruled out, as an 'association' in terms of 'privileged' links is not an option.<sup>81</sup> Instead, Article 216 TFEU might be preferred as it allows for the conclusion of international agreements with third countries to achieve Treaty objectives. As the agreement would be of mixed nature due to inevitable inclusion of political dialogue and other CFSP matters, CFSP legal basis will also feature. It can also be suggested that a new agreement falling short of 'association' status can provide the EU with an opportunity to instil a new meaning into Article 8 TEU providing for 'specific agreements' to be concluded with neighbouring countries, which 'may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly' in order to develop 'special relationship' with them. The question to ask here is whether 'special relationship' can be interpreted here to denote anything less than an 'association' with the neighbours. However, it appears the EU has chosen to follow an already existing blueprint of the Enhanced Partnership and Cooperation Agreement adopted with Kazakhstan, a member of the EAEU.<sup>82</sup> If we are to judge by this example, then the EU will most probably opt out for a similar combined legal basis consisting of CFPS legal basis (Article 31 and 37 TEU) and a joint

---

<sup>78</sup> See P Van Elsuwege, 'Variable Geometry in the European Neighbourhood Policy: The Principle of Differentiation and its Consequences' in E Lannon (ed.), *The European Neighbourhood Policy's Challenges*, Brussels: Peter Lang, 2012, pp. 59-84 ; 'The Evolution of the European Neighbourhood Policy and the Consistent Evolvement of its Inconsistencies', *Russian and European Affairs Review*, 2013, 7, p.1.

<sup>79</sup> European Commission/High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication, The Review of the European Neighbourhood Policy JOIN(2015) 50 final, Brussels, 18 November 2015.

<sup>80</sup> H Kostanyan and R Giragosyan, 'EU-Armenia Relations: Seizing the Second Chance', CEPS Commentary, 31 October 2016. To avoid a constitutional restriction on a maximum of two terms in office, = in a referendum in December 2015, the constitution was amended to transform Armenia into a parliamentary republic to guarantee that President Sargsyan remained in power.

<sup>81</sup> Case 12/86 *Demirel v City of Schwabisch Gmund* [1987] ECR 3719, para 9.

<sup>82</sup> EEAS Press Release, 'EU and Kazakhstan sign Enhanced Partnership and Cooperation Agreement', Brussels, 21 December 2015.

TFEU legal basis encompassing competence in transport, common commercial policy and development cooperation areas (Article 91, 100(2), 207 and 209 TFEU). If this assumption is correct, it might be seen as an emerging pattern of the legal framework to be offered to the EAEU member states.

Notwithstanding Armenia's ability to conclude a new agreement envisaging relatively close cooperation with the EU, the success of the latter hinges crucially on two sets of factors involving external actors. Some of these are not specific to Armenia and are of a more general character.

First of all, the forthcoming deal is a test for Russia's readiness to accept other EAEU members' foreign policy choices.<sup>83</sup> In the case of Armenia, Russia officially indicated that a new agreement between Armenia and the EU would not contradict cooperation with the EAEU and Russia, provided that it is compatible with the commitments taken by Armenia as part of the EAEU.<sup>84</sup> In fact, as underlined by the Russian Ministry of Foreign Affairs, all EAEU members have developed bilateral ties with the EU over the past two decades and negotiated agreements (for instance, the PCA with Kazakhstan initialled in January 2015). However, in the Russian narrative this cobweb of agreements should eventually turn into a bloc-to-bloc dialogue involving the EU and the EAEU on an equal footing.

A 'conversion' of the EU cooperation into a triangle involving Russia, the EU and the neighbours, was long seen by political scientists as necessary for establishing the Union's presence in the region.<sup>85</sup> While the EU hitherto preferred dealing with individual countries,<sup>86</sup> the current context might appear to necessitate a departure from that approach entailing relations with the EAEU as a trading block on its own right.<sup>87</sup> Any such prospect seems distant at present due to a number of serious obstacles. First, the relations with Russia need to be stabilised prior to contemplating any closer cooperation. The armed conflict in Ukraine appears currently to have acquired a 'frozen' status, a scenario favoured by Russia as it creates a new leverage over Ukraine's political choices. Currently, the EU's policy of sanctions has not achieved desired effects, and it remains to be seen how the conflict will be resolved. The EU thus far has been reluctant to envisage a dialogue with the EAEU as it may

---

<sup>83</sup> L Delcour and K Wolczuk, 'Armenia is becoming an important test-case for relations between the EU and the Eurasian Economic Union', London School of Economics EUROPP Blog, 13 May 2015.

<sup>84</sup> 'MID : dogovor Armenii i ES ne protivorechit vzaimodejstviu s Rossiej' [MID: Armenia's agreement with the EU does not contradict cooperation with Russia] *RIA Novosti*, 23 October 2015, <<http://ria.ru/world/20151023/1306967152.html>> accessed on 23 June 2016.

<sup>85</sup> H Haukkala and A Moshes, 'Beyond "Bing Bang": The Challenges of the EU's Neighbourhood Policy in the East', The Finnish Institute of International Affairs, Report 9/2004, 2004, p. 50; J Kulhanek, 'The Fundamentals of Russia's EU Policy' *Problems of Post-Communism*, 2010, 57, pp.51, 56.

<sup>86</sup> P Kalinichenko, *The Clash and Cooperation of Integrative Trade Spaces: Antidumping Law and the Practice of the EU in Relations with Russia and other countries of EURASEC*, 2011, New Russian University, p.35.

<sup>87</sup> This intention was declared in the 'Concept on International activities of the EURASEC', No 344, 5 July 2007, <<http://evrazes.com/docs/view/176>> (accessed 23 June 2016).

eventually confer legitimacy on both Russia's foreign policy and developments within the EAEU, including the Russian annexation of Crimea and the destabilisation of Eastern Ukraine. The EU is also concerned about a deal that would de facto reinforce bipolarisation in Europe,<sup>88</sup> and thereby endorse Russia's preference for distinct zones of influence.

Other obstacles are linked to the uncertain process of Eurasian integration itself as any direct talks with the EAEU would depend on its success and viability. The latter has been doubted due to the lack of reliable integration criteria, as well as insignificant benefits to the founding states.<sup>89</sup> Disagreements among the founding states as to the finalité of the union, including Belarus' and Kazakhstan's preference for economic integration only render the future of this venture unclear.<sup>90</sup> Scepticism has been expressed also regarding Russia's dominant position within the integration, and therefore its credibility in terms of being an equal partner.<sup>91</sup> The Eurasian Economic Community and its Customs Union were perceived to be a regional integration project centred on Russia's dominant role.<sup>92</sup> Concerns have also been raised about the state of the rule of law essential for a viable economic integration process based on common rules.<sup>93</sup> The main supranational authority, the Eurasian Economic Commission follows a one country, one vote approach (in difference with the previous Customs Union Commission with weighted votes largely in favour of Russia),<sup>94</sup> suggesting a certain concession on behalf of Russia in terms of its dominance within the integration project. Nevertheless, taking into account the coercive nature of the Armenian accession and its dependence on Russia one cannot exclude the possibility of coerced voting in the future despite the one country, one vote approach on paper. Furthermore, Russia's behaviour in Ukraine made its partner countries, including Kazakhstan, 'deeply unsettled' in the words of Dreyer and Popescu.<sup>95</sup> Dragneva and Wolczuk also

---

<sup>88</sup> Delcour et al, Kostanyan, Vandecasteele and Van Elsuwege, *op.cit.*, p.14.

<sup>89</sup> Vymyatnina and Antonova, *op.cit.*, p.6, pp. 57, 59-61; N Kassenova, 'Kazakhstan and Eurasian Economic Integration: Quick Start, Mixed Results and Uncertain Future' in Dragneva and Wolczuk, *op.cit.*, p.159.

<sup>90</sup> Delcour, Kostanyan, Vandecasteele and Van Elsuwege, *op.cit.*, p.12; J Cooper, 'The Development of Eurasian Economic Integration' in Dragneva and Wolczuk, note 4 above, 15-33, 28-30.

<sup>91</sup> J Cooper, 'Russia and the Eurasian Customs Union' in Dragneva and Wolczuk, *op.cit.*, p. 97; H Haukkala, 'The Impact of the Eurasian Customs Union on EU-Russia relations' in Dragneva and Wolczuk, *op.cit.*, p.177.

<sup>92</sup> E Vinokurov and A Libman, *Eurasian Integration: Challenges of Transcontinental Regionalism*, Basingstoke: Palgrave, 2012, p. 54.

<sup>93</sup> R Dragneva and K Wolczuk, 'The Eurasian Customs Union: Framing the Analysis' in Dragneva and Wolczuk, *op.cit.*, pp. 1-12.

<sup>94</sup> Popescu, *op.cit.*, p.11.

<sup>95</sup> I Dreyer and N Popescu, 'The Eurasian Customs Union: The Economics and the Politics' EU Institute for Security Studies, *Brief Issue* 11/2014, 2014, p.4.

note in this context the top-down nature of the integration closely linked to the national leaders and the quality of the regulation undermined by hastened integration efforts.<sup>96</sup>

In addition, Russia's willingness to establish a bloc-to-bloc trading stems more from the desire to validate the project, rather than a genuine desire to enhance trade relations.<sup>97</sup> If the trade cooperation between the emerging EAEU and the EU was, indeed, a genuine objective, theoretically such scenario could be envisaged. In principle, the EAEU is premised upon the WTO regime, which should also prevail for non-WTO members.<sup>98</sup> Thus, Belarus, a non-WTO member, has agreed to follow the WTO normative framework in their future obligations, and accept Russia's WTO tariff obligations.<sup>99</sup> However, the recent developments in the Eurasian project have only reinforced the EU's concerns about the EAEU's actual compatibility with WTO rules. Russia's reintroduction of customs checks with Belarus (in the context of retaliation for the sanctions adopted by the EU), as well as other non-tariff mutual restrictive measures cast doubt on the rule-based nature of the Eurasian project, as it is in clear breach of the Customs Union's rules.<sup>100</sup> This move also suggests that Russia is unlikely to tolerate other EAEU members' independent foreign policy actions, should these collide with its own political or economic interests.

Second, the future EU-Armenia cooperation may be affected by the broader regional security context. South Caucasian countries perhaps offer the best illustration of the discrepancy between the EU's long-term transformative power and the Eastern partners' pressing security needs. While the new agreement between Armenia and the EU is likely to be premised upon traditional EU policy instruments, such as the promotion of democracy and human rights as well as regulatory convergence, the flare up of the Nagorno-Karabakh conflict in April 2016 forcefully reminded the EU of the inherently fragile security situation in the South Caucasus. In fact, recent hostilities only highlighted the lack of direct EU involvement in the conflict and Russia's dominant role therein.<sup>101</sup> The EU cannot

---

<sup>96</sup> Rilka Dragneva and Kataryna Wolczuk, 'Eurasian Economic Integration: Institutions, Promises and Faultlines' in D Cadier (ed), *op.cit.*, p.13.

<sup>97</sup> Popescu, *op.cit.*, p.42.

<sup>98</sup> Dragneva, *op.cit.*, p.47.

<sup>99</sup> The Treaty on the Functioning of the Customs Union in the Multilateral System which entered into force in November 2011.

Cooper, *op.cit.*, p.23; R Connolly, 'Russia, the Eurasian Customs Union and the WTO' in Dragneva and Wolczuk, *op.cit.*, pp. 61-77.

<sup>100</sup> See Tarr, *op.cit.*

<sup>101</sup> The EU is not involved in the OSCE Minsk Group which includes three co-chairs: France, Russia and the United States. When warfare erupted in early April 2016, the EU High Representative only reiterated her support for the efforts of the Minsk Group and called on both sides to stop the fighting, without mentioning any additional EU involvement in the conflict settlement. EEAS, 'Statement by High Representative/Vice-President Federica Mogherini on the escalation in the Nagorno-Karabakh conflict, 2 April 2016, <[http://eeas.europa.eu/statements-eeas/2016/160402\\_03\\_en.htm](http://eeas.europa.eu/statements-eeas/2016/160402_03_en.htm)> (accessed on 23 June 2016).

offer an alternative to the Russian presence, not only due to the inherent weaknesses of its foreign policy given its intergovernmental nature, but also due to the lack of military capacity. Although the ENP Action Plans for Armenia and Azerbaijan included a priority area on the peaceful resolution of the conflict, it was merely restricted to offering ‘contribution’ to the already existing framework of the OSCE Minsk Group.<sup>102</sup> The latter is the main forum for the resolution of the conflict co-chaired by the US, Russia and France. However the status quo in the conflict suits Russia as part of its ‘controlled instability’<sup>103</sup> or ‘managed instability’<sup>104</sup> approach, where the unresolved conflicts create a leverage for Russia over the parties to the conflict. The only mechanism through which the Union has maintained a certain presence in the conflict resolution process is the Special Representative for the South Caucasus and the crisis in Georgia.<sup>105</sup> His mandate is primarily focused on maintaining communication with the parties concerned and supporting the OSCE Minsk Group ‘to contribute to the peaceful settlement of conflicts in accordance with the principles of international law and to facilitate the implementation of such settlement’.<sup>106</sup> Thus, no prospects can be envisaged in the EU’s role in terms of the conflict resolution efforts: the EU would prefer to play a more active role once the parties find a solution to the conflict themselves.<sup>107</sup> The most recent episode of escalation in the conflict demonstrated Russia’s continuous leading role. Any further deterioration of Armenia’s security environment will most probably result in its enhanced dependence on Russia and push the country further away from economic and political reforms, thereby impeding possible cooperation with the EU.

At the same time, it should be noted that the EU retains a certain leverage over Armenia. Beyond offering a template for modernisation, it can offer much needed financial assistance, as well as the incentive of visa free travel, even though the abolition of Schengen visas is not an immediate perspective for Armenia. The visa free travel was particularly noted as a significant incentive to induce Armenia to undertake much needed reforms related to justice sector.<sup>108</sup>

## Conclusion

---

<sup>102</sup> See priority area 1 in EU-Azerbaijan ENP Action Plan; priority area 7 in EU-Armenia ENP Action Plan.

<sup>103</sup> K Barysch, ‘The EU and Russia Strategic partners or squabbling neighbours?’, Centre for European Reform, 3 May 2004, pp.41-42.

<sup>104</sup> Tolstrup, *op.cit.*, pp.929-932.

<sup>105</sup> Herbert Salber is currently the Special Representative for the South Caucasus; Council Decision 2014/438/CFSP of 8 July 2014 amending and extending the mandate of the European Union Special Representative for the South Caucasus and the crisis in Georgia [2014] OJ L 200.

<sup>106</sup> Art. 3, Council Decision 2013/353/CFSP of 2 July 2013 amending and extending the mandate of the European Union Special Representative for the South Caucasus and the crisis in Georgia, *OJ*, 2013, L 185.

<sup>107</sup> See further N Ghazaryan ‘“Good Neighbourliness” and Conflict Resolution in Nagorno-Karabakh: A Rhetoric or Part of the Legal Method of the European Neighbourhood Policy?’ in: D Kochenov and E Basheska (eds), *The Principle of Good Neighbourly Relations in the European Legal Context*, Leiden, Martinus Nijhoff, 2015, pp.306-333.

<sup>108</sup> Kostanyan and Giragosian, *op. cit.*

The precarious political and economic situation of Armenia led to its coerced accession to the EAEU. Armenia's multifaceted dependence on Russia, most importantly in terms of the Nagorno-Karabakh conflict, ultimately paralysed its leadership and rendered years of EU integration reforms fruitless, sending the country into an uncertain future in an uncertain union. With less than obvious benefits, Armenia swiftly arranged its accession to the EAEU without much deliberation or public discussion and with acquiescence from its Constitutional Court and Parliament. The accession to the EAEU was judged to comply with the Armenian Constitution by the Constitutional Court, while any possible conflicts between the decisions of the EAEU and the secondary national law were prevented by making amendments to national legislation.

However, even in such entrapment, Armenia views the EU as an important partner with which new forms of cooperation ought to be sought. The future application of the Comprehensive and Enhanced Partnership Agreement will be an exercise in testing the parameters of engagement permitted not only by the EAEU membership *per se*, but also by Russia's political agenda. As far as trade is concerned, any future cooperation with the EU should accommodate Armenia's EAEU membership. As to the possibility of inter-bloc cooperation, the latter will depend on a number of external factors, including genuine trade integration, rule of law and adherence to the WTO rules, and other concerns with the current state of affairs within and around the EAEU.